N. E. 796. In the principal case, the court talks of commercial domicile, and of the situs of choses in action, but the true basis of the decision must be that the credits in question represent business capital employed in the state, taxable in much the same manner as any merchant's stock in trade.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — JUSTIFICATION — INTERPRETATION OF ENGLISH TRADES DISPUTES ACT OF 1906. — A stevedores' association, by agreement with a dockworkers' union, undertook to maintain union conditions and rates of pay, while the dockworkers agreed to protect the stevedores in maintaining a scale of charges to customers, by refusing to work for any stevedore who undercut the accepted rates. The plaintiff, a stevedore, maintained union conditions for his workmen but refused to join the association, and charged less than the association's rates to shipowners. The defendants, three stevedores and three union officials, therefore induced his men to strike, in violation of their contracts. The TRADES DISPUTES ACT of 1906, 6 Edw. VII, c. 47, § 3, establishes a defense to this type of action if the acts complained of are done "in contemplation or furtherance of a trade dispute." Section 5 (3) then defines a trade dispute as "any dispute between employers and workmen, or between workmen and workmen," connected broadly with conditions or terms of employment. The jury found that this was a dispute between employers, and that the dockworkers were "brought in to assist" the stevedores' association. *Held*, that this was not a "trade dispute" under the act. *Long* v. *Larkin*, [1914] 2 Ir. K. B. 285 (C. A.).

If one man joins another in a dispute with a third party, it seems to follow that a dispute arises between him and the third party. But the gist of the decision in the principal case is that if workmen take sides in a quarrel between employers, they are not necessarily engaged in a dispute with employers. The vice of the court's interpretation of the act is that it seeks in the origin and motive of the dispute, not in the fact of its existence, the defense accorded by the statute. Only a year before, the English Court of Appeal reached substantially the opposite conclusion, and held that if a strike is called, the fact that it is inspired by ill will does not overthrow the statutory defense. *Dallimore* v. *Williams*, 30 T. L. R. 432. Even if one accepts the interpretation put on the statute in the principal case, it is hard to see how the facts warranted the conclusion that the dockworkers were merely meddling in the stevedores' dispute, since their own wage scale depended on their preserving the integrity of the joint agreement. One is led to suspect that judicial hostility to the policy of the statute had some part in the result. See *Conway* v. *Wade*, [1908] 2 K. B. 844, 855; [1909] A. C. 506, 510. The decision has more than local significance, as similar questions may arise under the so-called Clayton Act, passed by Congress, October 16, 1914, which restricts the use of injunctions in certain cases arising out of labor disputes. 63d CONGRESS, PUBLIC ACT, No. 212, § 20.

TRADE MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — AUDIBLE SIMILARITY WITHOUT FRAUDULENT INTENT. — The plaintiff sold a brand of cigars called "B. & M." The defendants sold a cigar named "P. & M." and had recently extended their trade into the territory where the plaintiff operated. The plaintiff asks an injunction against the use of this name, claiming that his trade was being injured on account of the misleading similarity in the sound of the names. It did not appear that the defendants intended to injure or divert the plaintiff's business, or that there was any resemblance in the boxes or labels of the cigars. *Held*, that the injunction will not be granted. *B. Payn's Sons Tobacco Co.* v. *Payette*, 149 N. Y. Supp. 183 (Sup. Ct.).

Equity interferes to protect trade marks and trade names against infringe-

ment in order to prevent injury to the plaintiff's business by unfair competition. *Apollo Bros.* v. *Perkins*, 207 Fed. 530. See HOPKINS, TRADE MARKS, 2 ed., § 19. It is immaterial, therefore, whether the deceptive similarity is in the sound or appearance of the name, or in the shape or color of the package. *Welsbach Light Co.* v. *Adams*, 107 Fed. 463. Moreover, an intent to injure the plaintiff need not be shown ordinarily. See *Singer Machine Mfg. Co.* v. *Wilson*, L. R. 3 A. C. 376. But the presence of such a fraudulent intent will induce the courts to grant injunctive relief more readily in doubtful cases, as for example, against the use of the defendant's own name to the injury of the plaintiff's business. *International Silver Co.* v. *Rodgers Bros.*, 136 Fed. 1019. *Cf. Bernhard* v. *Bernhard*, 156 App. Div. 739, 142 N. Y. Supp. 94. In the principal case, the plaintiff had no property right in the defendants' trademark "P. & M.," the possibility of damage was slight, and there was no colorable imitation with intent to take advantage of the plaintiff's good will. *Cf. International Silver Co.* v. *Rodgers Bros*, *supra*. Balancing all considerations, therefore, in the absence of fraud the resemblance did not seem deceptive enough to justify an injunction.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — POWER OF COURT TO INTERFERE WITH DISCRETIONARY INVESTMENTS. — Certain funds were given to trustees under a settlement, with power to invest and to vary investments at their discretion among securities of certain classes. The trustees placed some of the funds in a mortgage of leasehold premises on proper valuations. A later valuation revealed depreciation, and the *cestui que trust* on originating summons, without alleging any breach of trust, now asks an inquiry whether the investment should be continued or called in. *Held*, that the inquiry will be granted. *In re D'Epinoix's Settlement*, [1914] 1 Ch. 890.

The extent to which courts will interfere with the discretion of trustees is not definitely settled on the authorities. Of course, if the trustee exercises his discretion fraudulently, or in bad faith, it is clear that the court will step in. *Portland* v. *Topham*, 11 H. L. Cas. 32. But where the trustee acts with perfect good faith, his discretion will be respected, with certain limitations. Thus it is well settled that courts will not attempt to control a discretion coupled with "uncontrollable authority." *Gisborne* v. *Gisborne*, L. R. 2 A. C. 300. Nor will they interfere with a simple discretionary power, unconnected with any duty. *In re Courtier*, 34 Ch. D. 136. But if the power or discretion involves a duty, and is meant to be exercised, its execution will be enforced. See *Read* v. *Patterson*, 44 N. J. Eq. 211, 219; LEWIN, TRUSTS, 12 Eng. ed., p. 766. Such a duty is commonly found in cases where the discretion is construed to cover some merely ministerial act, such as renewing an investment, or in cases where there is a duty to sell or provide maintenance, with discretion as to the time and manner. *Mortimer* v. *Watts*, 14 Beav. 616; *Re Burrage*, 62 L. T. R. 752; *Ransome* v. *Burgess*, L. R. 3 Eq. 773. The principal case illustrates a tendency to extend the power of the courts to control discretion, and the decision is to be sustained because of the trustee's duty to the beneficiaries to exercise sound judgment concerning investments, in spite of the discretion vested in him.

TRUSTS — RESULTING TRUSTS — DISTRIBUTION AMONG SUBSCRIBERS TO A FUND RAISED BY SUBSCRIPTION. — An unexpended balance of the fund raised for the relief of Balkan War sufferers was left in the hands of the British Red Cross Society at the termination of the war. An originating summons was issued to determine whether it should be divided among the subscribers in proportion to their subscriptions, or whether the last subscribers should be paid in full. *Held*, that it should be divided among all the subscribers in